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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 JELLY BELLY CANDY COMPANY, a  
California corporation,

14 Plaintiff,

15 v.  
16

17 ARAN CANDY LTD., an Irish corporation,  
SWEETSTALL.COM LTD., a British  
18 corporation, and DOES 1 through 100, inclusive,

19 Defendants.  
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Case No. CV 07-05260 MHP

**DEFENDANTS' ANSWER TO  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

The Hon. Marilyn H. Patel

Complaint Filed: October 16, 2007

1 Defendants Aran Candy Ltd. (“Aran Candy”) and Sweetstall.com Ltd. (“Sweetstall”),  
2 through their undersigned counsel, respond to the Complaint for Trademark Infringement; False  
3 Designations of Origin, Unfair Competition and Trade Dress Infringement; Trademark and Trade  
4 Dress Dilution; Trademark and Trade Dress Infringement; False or Misleading Statements; and  
5 Trademark Dilution (“Complaint”) of Jelly Belly Candy Company (“JBCC”), filed October 16,  
6 2007, as follows:<sup>1</sup>

### 7 JURISDICTION AND VENUE

8 1. Defendants admit that JBCC purports to bring the claims listed in sentence one of  
9 Paragraph 1 and purports to seek the relief alleged in sentence two of Paragraph 1.

10 2. Defendants admit that the Court has subject matter jurisdiction over the claims as  
11 alleged pursuant to 28 U.S.C. § 1331 and § 1338, and 15 U.S.C. § 1121. Defendants further  
12 admit this Court has supplemental jurisdiction over JBCC’s remaining state law claims as alleged  
13 under 28 U.S.C. § 1367(a).

14 3. Defendants deny the allegations in Paragraph 3.

### 15 PARTIES

16 4. Defendants admit that JBCC is a corporation with a facility at One Jelly Belly  
17 Lane in Fairfield, California 94533, and that JBCC produces, distributes, and sells jelly beans.  
18 Defendants otherwise lack sufficient information to admit or deny the remaining allegations in  
19 Paragraph 4 and on that basis deny those allegations.

20 5. Defendants admit the allegations in Paragraph 5, except they deny that Aran  
21 Candy’s principal place of business is in the Hexagon Buildings.

22 6. Defendants deny the allegations in Paragraph 6.

23 7. Defendants admit that Sweetstall is organized and existing under the laws of the  
24 United Kingdom and that its principal place of business is at Unit 9, 572 Ipswich Road,  
25 Colchester, Essex, C04 9HB. Defendants deny the other allegations in Paragraph 7.

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27 <sup>1</sup> The paragraph numbers herein correspond to the paragraph numbers in JBCC’s  
28 Complaint.

8. Defendants deny the allegations in Paragraph 8.

9. Defendants lack sufficient information to admit or deny the allegations in Paragraph 9 and on that basis deny those allegations.

10. Defendants deny the allegations in Paragraph 10.

## FACTS

11. Defendants admit that JBCC advertises, markets, manufactures, and sells jelly beans in the United States and in certain other countries. Defendants otherwise lack sufficient information to admit or deny the remaining allegations in Paragraph 11 and on that basis deny those allegations.

12. Defendants deny that the Jelly Belly logo alleged in Paragraph 12 has acquired and continues to have secondary meaning and that Jelly Belly has obtained common law trademark rights in the Jelly Belly logo alleged in Paragraph 12. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 12 and on that basis deny the allegations therein.

13. Defendants admit U.S. Registration Number 1,203,786 was issued for the mark represented on page 2 of Exhibit 1 of the Complaint on the date alleged in Paragraph 13. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 13 and on that basis deny those allegations.

14. Defendants admit U.S. Registration Number 1,232,091 was issued for the mark represented on page 2 of Exhibit 2 of the Complaint on the date alleged in Paragraph 14. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 14 and on that basis deny those allegations.

15. Defendants admit U.S. Registration Number 2,836,178 was issued for the mark represented on page 2 of Exhibit 3 of the Complaint. Defendants deny that the registration issued on August 27, 2004. Defendants lack information sufficient to admit or deny the remaining allegations in Paragraph 15 and on that basis deny those allegations.

1           16. Defendants admit California Trademark Registration Number 62,724 was issued  
2 on the date alleged in Paragraph 16. Defendants lack sufficient information to admit or deny all  
3 other allegations in Paragraph 16 and on that basis deny those allegations.

4           17. Defendants lack sufficient information to admit or deny the allegations in  
5 Paragraph 17 and on that basis deny those allegations.

6           18. Defendants deny the allegations in Paragraph 18.

7           19. Defendants deny that any of the flavor names alleged in Paragraph 19 have  
8 acquired and continue to have secondary meaning and that Jelly Belly has obtained common law  
9 trademark rights in any of the flavor names alleged in Paragraph 19. Defendants lack sufficient  
10 information to admit or deny the allegations in Paragraph 19 and on that basis deny those  
11 allegations.

12           20. Defendants admit that some of the jelly beans made by JBCC have a speckled,  
13 non-uniform color; that jelly beans made by JBCC are smaller than some other jelly beans; and  
14 that JBCC makes jelly beans in a variety of flavors. Defendants lack sufficient information to  
15 admit or deny the remaining allegations in Paragraph 20 and on that basis deny those allegations.

16           21. Defendants admit U.S. Registration Number 1,337,901 was issued for the mark  
17 represented in page 1 of Exhibit 6 on the date alleged in Paragraph 21. Defendants lack sufficient  
18 information to admit or deny all other allegations in Paragraph 21.

19           22. Defendants deny the allegations in Paragraph 22.

20           23. Defendants deny that the Jelly Belly trade dress alleged in Paragraph 23 is  
21 distinctive or nonfunctional, deny that the Jelly Belly trade dress has acquired or continues to  
22 have secondary meaning, and denies that JBCC has acquired common law rights in the Jelly  
23 Belly trade dress alleged in Paragraph 23. Defendants lack sufficient information to admit or  
24 deny all other allegations in Paragraph 23 and on that basis deny those allegations.

25           24. Aran Candy denies that it or Sweetstall sells or distributes jelly beans and other  
26 candies in Aran Candy's own packaging in this Judicial District or elsewhere in the United States,  
27 and admits it sells and distributes jelly beans and other candies elsewhere. Aran Candy lacks  
28 sufficient information to admit or deny all other allegations in Paragraph 24 and on that basis

1 denies those allegations. Sweetstall admits that it offers candies for sale and distribution in this  
2 Judicial District and elsewhere, but denies that it sells Aran Candy jelly beans in this Judicial  
3 District or elsewhere in the United States; and otherwise lacks sufficient information to admit or  
4 deny all other allegations in Paragraph 24 and on that basis denies those allegations.

5 25. Defendants admit that Aran Candy sells jelly beans, some of which have a  
6 speckled, non-uniform color pattern, in a variety of flavors, some of which may be similar in size  
7 or shape to some products sold by JBCC. Defendants deny that Aran Candy's jelly beans are  
8 "virtually the same flavors sold by Jelly Belly." Defendants lack sufficient information to admit  
9 or deny all remaining allegations in Paragraph 25 and on that basis deny those allegations.

10 26. Defendants deny the allegations in Paragraph 26.

11 27. Defendants admit that some of Aran Candy's packaged products previously sold in  
12 the United States displayed a product selection on the packaging. Sweetstall denies that it  
13 packages any jelly bean products and on that basis denies it has used or uses a menu on the jelly  
14 bean products that it sells. Defendants deny all other allegations in Paragraph 27.

15 28. Defendants admit that in the past Aran Candy used the flavor names alleged in  
16 Paragraph 28 on some of its jelly bean packages for products sold in the United States. Aran  
17 Candy denies that it presently uses those alleged flavor names on packaged goods intended for or  
18 sold in the United States market or that it otherwise offers for sale any packaged jelly beans  
19 within the United States, and further denies that it has done so at any time on or after the date of  
20 the filing of JBCC's Complaint. Sweetstall denies that it packages any jelly bean products and on  
21 that basis denies it has used or is using any jelly bean flavor names on any packaging of jelly bean  
22 products it sells. Defendants deny all other allegations in Paragraph 28.

23 29. Defendants admit that Aran Candy has in the past used a jelly bean-shaped  
24 character on at least some of its packing of some of its jelly bean products intended for sale  
25 within the United States. Aran Candy denies that it presently uses that character on packaged  
26 goods intended for or sold within the United States market or that it otherwise offers for sale any  
27 packaged jelly beans within the United States, and further denies that it has done so at any time  
28 on or after the date of the filing of JBCC's Complaint. Sweetstall denies that it packages any jelly

1 bean products and on that basis denies it has used or uses any jelly bean-shaped or humanized  
2 jelly bean character on any packaging of jelly bean products it sells. Defendants deny all other  
3 allegations in Paragraph 29.

4 30. Defendants deny the allegations in Paragraph 30.

5 31. Defendants admit they advertise and sell jelly beans through their respective web  
6 sites, [www.arancandy.com](http://www.arancandy.com) and [www.jellybeanfactory.com](http://www.jellybeanfactory.com) for Aran Candy and  
7 [www.sweetstall.com](http://www.sweetstall.com) for Sweetstall, except Defendants deny they advertise or sell any Aran  
8 Candy packaged jelly beans in California or elsewhere in the United States through these or any  
9 other web sites of which Defendants are aware. Regarding the second sentence of Paragraph 31,  
10 Defendants admit the alleged web sites include information regarding Aran Candy's jelly beans,  
11 but otherwise deny the remaining allegations in that sentence. Defendants deny the allegations in  
12 the third sentence of Paragraph 31. Defendants admit the allegations in the fourth sentence of  
13 Paragraph 31 that the web sites [www.arancandy.com](http://www.arancandy.com) and [www.jellybeanfactory.com](http://www.jellybeanfactory.com) include a  
14 link to the web site [www.sweetstall.com](http://www.sweetstall.com) for Sweetstall, but otherwise deny the allegations in the  
15 fourth sentence of Paragraph 31. Defendants deny all other allegations in Paragraph 31.

16 32. Defendants deny that the web sites [www.arancandy.com](http://www.arancandy.com) and  
17 [www.jellybeanfactory.com](http://www.jellybeanfactory.com) solicit sales in California or are used to sell jelly beans to consumers  
18 located within the United States, including California. Defendants admit the web site  
19 [www.sweetstall.com](http://www.sweetstall.com) solicits sales from individuals in California and can be used to sell products  
20 to consumers located throughout the United States, including California, except Defendants deny  
21 that web site solicits sales of Aran Candy packaged jelly beans in California or is used to sell  
22 Aran Candy packaged jelly beans to consumers located within the United States, or within  
23 California. Defendants deny all other allegations in Paragraph 32.

24 33. Defendants admit the allegations in the first two sentences of Paragraph 33 with  
25 respect to [www.arancandy.com](http://www.arancandy.com), [www.jellybeanfactory.com](http://www.jellybeanfactory.com), and [info@arancandy.com](mailto:info@arancandy.com) for Aran  
26 Candy and [www.sweetstall.com](http://www.sweetstall.com) and [sally@sweetstall.com](mailto:sally@sweetstall.com) for Sweetstall. Defendants deny all  
27 other allegations in Paragraph 33  
28

**RESPONSE TO COUNT ONE**

**TRADEMARK INFRINGEMENT  
IN VIOLATION OF SECTION 32(l) OF THE LANHAM ACT**

34. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

35. Defendants admit that JBCC purports to allege a claim for infringement of federally registered trademarks purportedly arising under Section 32(l) of the Lanham Act, 15 U.S.C. § 1114.

36. Defendants deny the allegations in Paragraph 36.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants deny the allegations in Paragraph 38.

39. Defendants deny the allegations in Paragraph 39.

40. Defendants deny the allegations in Paragraph 40.

**RESPONSE TO COUNT TWO**

**FALSE DESIGNATIONS OF ORIGIN, UNFAIR COMPETITION, AND TRADE DRESS  
INFRINGEMENT IN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT**

41. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

42. Defendants admit that JBCC purports to allege a claim for unfair competition, false designation of origin, and trade dress infringement purportedly arising under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

43. Defendants deny the allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

**RESPONSE TO COUNT THREE**

**TRADEMARK AND TRADE DRESS DILUTION IN VIOLATION OF  
SECTION 43 (c) OF THE LANHAM ACT**

48. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants deny the allegations in Paragraph 55.

**RESPONSE TO COUNT FOUR**

**TRADEMARK AND TRADE DRESS INFRINGEMENT UNDER CALIFORNIA LAW**

56. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

57. Defendants admit that JBCC purports to allege a claim for trademark and dress infringement purportedly arising under Cal. Bus. & Prof. Code §14335 and California common law.

58. Defendants deny the allegations in Paragraph 58.

59. Defendants deny the allegations in Paragraph 59.

60. Defendants deny the allegations in Paragraph 60.

61. Defendants deny the allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.

63. Defendants deny the allegations in Paragraph 63.



**RESPONSE TO COUNT FIVE**

**UNFAIR COMPETITION UNDER CALIFORNIA LAW**

64. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

65. Defendants admit that JBCC purports to allege a claim for unfair competition purportedly arising under Cal. Bus. & Prof. Code §17200, et seq., and California common law.

66. Defendants deny the allegations in Paragraph 66.

67. Defendants deny the allegations in Paragraph 67.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69.

70. Defendants deny the allegations in Paragraph 70.

**RESPONSE TO COUNT SIX**

**FALSE OR MISLEADING STATEMENTS UNDER CALIFORNIA LAW**

71. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

72. Defendants admit that JBCC purports to allege a claim for false or misleading statements purportedly arising under Cal. Bus. & Prof. Code §17500 and California common law.

73. Defendants deny the allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

76. Defendants deny the allegations in Paragraph 76.

77. Defendants deny the allegations in Paragraph 77.

**RESPONSE TO COUNT SEVEN**

**TRADEMARK DILUTION UNDER CALIFORNIA LAW**

78. Defendants incorporate by reference and re-allege their responses to each of the paragraphs above.

79. Defendants admit that JBCC purports to allege a claim for trademark dilution purportedly arising under Cal. Bus. & Prof. Code §14330 and California common law.

1 80. Defendants deny the allegations in Paragraph 80.

2 81. Defendants deny the allegations in Paragraph 81.

3 82. Defendants deny the allegations in Paragraph 82.

4 83. Defendants deny the allegations in Paragraph 83.

5 84. Defendants deny the allegations in Paragraph 84.

6 **PRAYER FOR RELIEF**

7 Defendants deny that JBCC is entitled to any of the relief for which it prays as to any  
8 cause of action.

9 **DEFENSES**

10 Defendants assert the following defenses, without regard to whether they are “affirmative”  
11 defense or matters to which JBCC has the burden of proof.

12 **First Defense**

13 The Complaint fails to state a claim upon which relief can be granted.

14 **Second Defense**

15 The trademarks used by Defendants in connection with Aran Candy’s goods are not likely  
16 to, and were not intended to, cause confusion, or to cause mistake, or to deceive as to the  
17 affiliation, connection, or association of Aran Candy with JBCC, or as to the origin, sponsorship,  
18 or approval of Aran Candy’s goods by JBCC

19 **Third Defense**

20 The Complaint is barred by the doctrine of laches.

21 **Fourth Defense**

22 On information and belief, JBCC’s alleged trademarks are not distinctive or nonfunctional  
23 and have no secondary meaning, and are therefore inherently unprotectable.

24 **Fifth Defense**

25 JBCC is not entitled to disgorgement of profits from Defendants under California Unfair  
26 Competition Law, Cal. Bus. & Prof. Code § 17200, or any other California statutory or common  
27 law.

**Sixth Defense**

JBCC's claims are barred by unclean hands.

**Seventh Defense**

JBCC's claims are barred by estoppel.

**Eighth Defense**

JBCC's claims are barred by its failure to mitigate damages.

**Ninth Defense**

JBCC's claims are barred by waiver.

**Tenth Defense**

JBCC's claims are barred by laches.

**Eleventh Defense**

JBCC's claims are barred by consent and acquiescence.

**Twelfth Defense**

JBCC's claims are barred by fraud pursuant to Lanham Act Section 33(b), 15 U.S.C. §1115(b).

**Thirteenth Defense**

JBCC's claims are barred by relevant statutes of limitations.

Pursuant Rule 38 of the Federal Rules of Civil Procedure and Local Rules 3-6, Defendants demand a trial by jury.

**ARAN CANDY'S PRAYER FOR RELIEF**

WHEREFORE, Aran Candy prays as follows:

- (a) That JBCC take nothing by its Complaint;
- (b) That judgment be entered for Defendants;
- (c) That Defendants be awarded its costs of the suit herein; and

1 (d) For any other such further relief as this Court deems proper.

2 Dated: July 7, 2008

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